

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Tessa Yesselman	Team: Squad #4	CCRB Case #: 201901581	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 02/13/2019 1:00 AM	Location of Incident: Fulton Street and Throop Avenue	Precinct: 79	18 Mo. SOL 8/13/2020	EO SOL 3/30/2021	
Date/Time CV Reported Wed, 02/13/2019 2:50 AM	CV Reported At: Precinct	How CV Reported: In-person	Date/Time Received at CCRB Wed, 02/20/2019 11:03 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Cesar Gomez	00477	941024	SRG
2. POM Sean Kern	10507	955000	SRG
3. POM Nelson Reyes	27566	953309	SRG

Officer(s)	Allegation	Investigator Recommendation
A.POM Nelson Reyes	Abuse: Police Officer Nelson Reyes stopped § 87(2)(b)	
B.POM Nelson Reyes	Abuse: Police Officer Nelson Reyes frisked § 87(2)(b)	
C.POM Sean Kern	Abuse: Police Officer Sean Kern frisked § 87(2)(b)	
D.POM Nelson Reyes	Abuse: Police Officer Nelson Reyes questioned § 87(2)(b)	
E.SGT Cesar Gomez	Discourtesy: Sergeant Cesar Gomez spoke discourteously to § 87(2)(b)	
F.SGT Cesar Gomez	Abuse: Sergeant Cesar Gomez failed to provide § 87(2)(b) with a business card.	
G.POM Sean Kern	Abuse: Police officer Sean Kern failed to provide § 87(2)(b) with a business card	
H.POM Nelson Reyes	Abuse: Police Officer Nelson Reyes failed to provide § 87(2)(b) with a business card.	

Case Summary

On February 13, 2019, § 87(2)(b) filed this complaint with IAB (log 2019-6306) (**01 Board Review**). On February 20, 2019, this case was received by the CCRB.

On February 13, 2019, at approximately 1:00 AM, in the vicinity of Fulton Street and Throop Avenue in Brooklyn, Police Officer Nelson Reyes of the Strategic Response Group (SRG) stopped § 87(2)(b) (**Allegation A: Abuse of Authority, § 87(2)(g)**). PO Reyes was partnered with Sergeant Cesar Gomez and Police Officer Sean Kern, also of SRG. PO Reyes and PO Kern frisked § 87(2)(b) (**Allegation B and Allegation C: Abuse of Authority, § 87(2)(g)**) and PO Reyes questioned § 87(2)(b) (**Allegation D: Abuse of Authority, § 87(2)(g)**). Sgt. Gomez spoke discourteously to § 87(2)(b) (**Allegation E: Discourtesy, § 87(2)(g)**). Sgt. Gomez, PO Reyes, and PO Kern did not provide § 87(2)(b) with business cards (**Allegations F-H: Abuse of Authority, § 87(2)(g)**).

No arrests were made or summons issued as a result of this incident.

There is no video footage of this incident. The investigation obtained audio, recorded by § 87(2)(b) of this incident (**02 Board Review**).

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Nelson Reyes stopped § 87(2)(b)

It is undisputed that § 87(2)(b) jaywalked.

§ 87(2)(b) (**03 Board Review**) stated that he was walking on Fulton Street when he observed an unmarked black vehicle driving towards him. § 87(2)(b) perceived the vehicle to be a police vehicle and assumed he was going to be stopped. § 87(2)(b) put his phone in his pocket and began audio recording. After the vehicle drove by him, he crossed in the middle of the block to the other side of Fulton Street and continued walking. The vehicle then did a U-turn and drove up to him. PO Reyes, PO Kern, and Sgt. Gomez all exited the vehicle and approached § 87(2)(b). PO Reyes told § 87(2)(b) that he was stopping him, and PO Kern told § 87(2)(b) that he was not allowed to cross the street not at a crosswalk.

PO Reyes (**13 Board Review**), PO Kern (**12 Board Review**), and Sgt. Gomez (**14 Board Review**) provided statements consistent with one another regarding this portion of this incident. All three officers stated that they were driving on Fulton Street and § 87(2)(b) was walking towards them on Fulton Street. After they drove by § 87(2)(b), § 87(2)(b) repeatedly looked back at the vehicle and crossed the street in the middle of the block.

New York City Rules §4-04 states that no pedestrian shall cross a roadway except at a crosswalk on any block in which traffic control signals are in operation at both intersections bordering the block (**05 Board Review**).

Allegation (B) Abuse of Authority: Police Officer Nelson Reyes frisked § 87(2)(b)

Allegation (C) Abuse of Authority: Police Officer Sean Kern frisked § 87(2)(b)

Allegation (D) Abuse of Authority: Police Officer Nelson Reyes questioned § 87(2)(b)

It is undisputed that PO Reyes and PO Kern frisked § 87(2)(b) front pants pockets and the front pocket of § 87(2)(b) hooded sweatshirt. It is also undisputed that PO Reyes asked § 87(2)(b) if he had any weapons.

§ 87(2)(b) (**03 Board Review**) stated that immediately after PO Reyes told him he was stopping him, PO Reyes and PO Kern began “grabbing” his front jacket pockets, front pants pockets, and the front pocket of his hooded sweatshirt. PO Reyes told § 87(2)(b) that he thought § 87(2)(b) had a gun in his pocket and § 87(2)(b) replied that he did not. § 87(2)(b) had a phone in his front pants pocket, which he was using to audio record his interaction with the officers.

PO Reyes and Sgt. Gomez provided similar testimony regarding this aspect of their interaction with § 87(2)(b). PO Reyes (**13 Board Review**) stated that he observed a bulge in § 87(2)(b) front pants pocket as he walked on Fulton Street. § 87(2)(b) was making movements to “adjust” the bulge in his front pocket. After PO Reyes exited his vehicle and approached § 87(2)(b) he continued to observe the bulge. The bulge was rectangular and could have been the shape of a nozzle of a gun. § 87(2)(b) was immediately combative, and clenched his hand in a fist, as if he was going to punch one of the officers. PO Reyes asked § 87(2)(b) if he had any weapons on him and frisked the area of § 87(2)(b) pocket where he observed the bulge. PO Reyes did this because he observed a large bulge on § 87(2)(b) person, § 87(2)(b) was grabbing the bulge as if he was trying to camouflage it from the officers, and § 87(2)(b) was acting aggressively, so PO Reyes thought he could have been carrying a firearm. Sgt. Gomez (**14 Board Review**) stated that he observed § 87(2)(b) “grabbing” one of his front pockets as he walked on Fulton Street. Sgt. Gomez did not observe any bulges on § 87(2)(b) initially and did not know why § 87(2)(b) was grabbing his pocket. After Sgt. Gomez exited the police vehicle and approached § 87(2)(b) he observed that § 87(2)(b) right front pants pocket was “bulging.” Sgt. Gomez stated that the bulge could have been “the size of a gun,” but could not describe more specifically the size or shape of the bulge, except that he did not think it was a phone, because § 87(2)(b) was carrying a phone in one of his hands.

PO Kern (**12 Board Review**) did not observe any bulge in § 87(2)(b) pockets when he observed him from inside of the police vehicle. PO Kern approached § 87(2)(b) because he intended to issue him a summons for jaywalking. § 87(2)(b) was immediately angry and began yelling and swearing at the officers. § 87(2)(b) also clapped his hands and flailed his arms as he spoke to the officers. PO Kern decided to frisk § 87(2)(b) because of his loud tone of voice and his aggressive demeanor, demonstrated by § 87(2)(b) clapping his hands and flailing his arms. Representative Kate Conlon interjected and asked PO Kern if § 87(2)(b) had any bulges on his person, and PO Kern responded that § 87(2)(b) had a “large bulge” in “one” of his pockets. The pockets could have been in his shirt or pants. PO Kern could not describe the bulge, beyond

saying that it was “large and bulky.” § 87(2)(b) did not make any contact with the bulge while interacting with the officers.

§ 87(2)(g)

Allegation (E) Discourtesy: Sergeant Cesar Gomez spoke discourteously to § 87(2)(b)

It is undisputed that Sgt. Gomez spoke discourteously to § 87(2)(b) § 87(2)(b) **(03 Board Review)** stated that Sgt. Gomez said, “Get a job, my man.” The audio recording provided by § 87(2)(b) § 87(2)(b) captured Sgt. Gomez making the statement **(02 Board Review)**, and Sgt. Gomez **(14 Board Review)** acknowledged that the voice in the recording is his.

Sgt. Gomez **(14 Board Review)** did not recall making any comments to § 87(2)(b) about his perceived socioeconomic or employment status, and after hearing the recording, stated that he did not have a reason for why he told § 87(2)(b) to get a job.

§ 87(2)(g)

Allegation (F) Abuse of Authority: Sergeant Cesar Gomez failed to provide § 87(2)(b) with a business card.

Allegation (G) Abuse of Authority: Police officer Sean Kern failed to provide § 87(2)(b) with a business card

Allegation (H) Abuse of Authority: Police Officer Nelson Reyes failed to provide § 87(2)(b) with a business card.

It is undisputed that none of the officers provided § 87(2)(b) with business cards.

§ 87(2)(b) requested the officer’s names, shield numbers, and command, but did not request a business card. The officers verbally provided their names and shield numbers to § 87(2)(b)

Sgt. Gomez **(11 Board Review)**, PO Kern **(09 Board Review)**, and PO Reyes **(10 Board Review)** provided consistent testimony. All of the officers stated that they were carrying business cards during their interaction with § 87(2)(b) but they did not think providing § 87(2)(b) with a card would be “prudent” because of his irate demeanor, and because he walked away from the officers.

Patrol Guide Procedure 203-09 (07 Board Review) states that business cards are to be distributed in the following situations:

- a. Noncustodial questioning of individuals suspected of criminal activity (Level 2 Encounter)
- b. Stop where an officer has an individualized, reasonable suspicion that the person stopped has committed, is committing, or is about to commit a crime and where a reasonable person would not feel free to end the encounter (Level 3 Encounter)

c. Frisk (Level 3 Encounter)

NYC Administrative Code 14-174 (06 Board Review) states that an officer shall offer a business card to any person requested identifying information, or provide such information verbally when an officer does not have an adequate number of business cards.

§ 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b)
- Sgt. Gomez has been a member of service for thirteen years and has been a subject in seven previous cases with 22 allegations, of which one was substantiated.
 - Case 200807471 involved substantiated allegations of Abuse of Authority: Stop. The Board recommended Charges, and the NYPD imposed Command Discipline B.
 - Sgt. Gomez has three previous discourtesy allegations.
- PO Kern has been a member of service for six years and has been a subject in six previous cases with thirteen allegations and no substantiations.
 - § 87(2)(g)
- PO Reyes has been a member of service for seven years and has been a subject in nine previous cases with seventeen allegations, of which four were substantiated.
 - Case 201407314 involved a substantiated allegation of Force: Physical Force. The Board recommended Command Discipline B and the NYPD imposed Command Discipline A.
 - Case 201502327 involved a substantiated allegation of Abuse of Authority: Stop. The Board recommended Formalized Training and the NYPD imposed Instructions.
 - Case 201600125 involved substantiated allegations of Abuse of Authority: Stop and Vehicle Search. The Board recommended charges. PO Reyes was found guilty and forfeited five vacation days.
 - PO Reyes has two previous stop allegations.

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
 - According to the Office of Court Administration (OCA), § 87(2)(b) has no history of criminal convictions in New York City (**04 Board Review**).
 - As of December 17, 2019, results for a FOIL for a Notice of Claim sent to the NYC Comptroller's Office are pending.
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Squad No.: 4

Investigator:	_____	_____	_____
	Signature	Print Title & Name	Date

Squad Leader:	_____	_____	_____
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date